PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) CML00556J

I hereby certify that this correspondence is being electronically transmitted on the date listed below [(37 CFR 1.8(a)].

on: November 26, 2008

Signature /Silvana Wiltshire/

Silvana Wiltshire
Typed or printed name

Application Number 10/677,909	Filed October 2, 2003
First Named Inventor Nattavut Smavatkul	
Art Unit 2618	Examiner Vo, Nguyen Thanh

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheets(s).
Note: No more than five (5) pages may be provided.

I am the

☐ applicant inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.
Registraton number 45,834

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34: ________

/Larry G. Brown/
Signature

Larry G. Brown
Typed or printed name

(954) 723-6449
Telephone number

November 26, 2008
Date

NOTE: Signatures of all the inventors or assignees or record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, se below*

☒ *Total of 1 forms are submitted.

(SB/33 (07-05)

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S):	Nattavut Smavatkul	GROUP ART UNIT:	2618
APPLN. NO.:	10/677,909	EXAMINER:	Vo, Nguyen Thanh
FILED:	October 2, 2003	Confirmation No.	9385
TITLE:	METHOD OF COMMUNICATION DEVICE INITIATED FRAME EXCHANGE		

CERTIFICATE UNDER 37 CFR 1.8(a)	
I hereby certify that this correspondence is being electronically transmitted on the date listed below:	
Date:	November 26, 2008
Signature	/Silvana Wiltshire/
Typed or printed name:	Silvana Wiltshire

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop: **AF**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request review of the Non-Final Office Action mailed June 16, 2008 relating to the above-identified application and in furtherance of the Notice of Appeal filed on November 26, 2008.

Concurrently with this submission, Applicants are also paying the requisite fee for a three month Extension of Time.

Claims 1-10 and 12-15 are pending in the application, the latest version of which can be found in Applicants' Response of May 30, 2008. In the Office Action, claims 1-10 and 12-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,067,297 to Beach (Beach) in view of U.S. Patent No. 6,463,307 to Larsson (Larsson) and further in view of U.S. Patent Application Publication No. 2007/0054632 to Lu (Lu).

Independent Claims 1, 8, 10 and 14

Independent claim 1 recites the limitation that frame exchange is initiated at the communication device by transmitting a polling message along with uplink traffic to an associated access point in which the polling message requests a downlink traffic frame. Independent claims 8, 10 and 14 recite similar language. The Examiner acknowledges that Beach does not disclose the limitation that the communication device initiates the frame exchange (see page 3 of the Office Action of June 16, 2008). In rejecting the claim, however, the Examiner argues that such a feature is described in Larsson (see page 3 of the Office Action of June 16, 2008).

Larsson describes a process in which a base station provides a time period to a hibernating mobile terminal, and at the end of the time period, the hibernating mobile terminal will listen for paging messages from the base station (see Abstract). If the hibernating mobile terminal determines that it has a packet to send to the base station, the hibernating mobile terminal can awaken on its own volition to change from the hibernation state to an awake state (see col. 3, lines 53-58). At this point, the mobile terminal sends a capacity request signal to the base station to allow for transfer of the packet from the mobile terminal to the base station (see col. 3, lines 58-60). It is important to note, however, that when the mobile terminal changes from one state to another state, the new state is not functional or operative until the base station recognizes that the mobile terminal is in the new state (see col. 5, lines 59-62). That is, the mobile terminal and the base station cannot interact according to the rules of interaction associated with the mobile terminal's new state until the base station is aware that the mobile terminal is in the new state (see col. 5, line 64 – col. 6, line 1).

Larsson goes on to explain that when the base station determines that it has received a capacity request from the mobile terminal, the base station assigns an uplink slot to the mobile terminal (see col. 8, lines 6-9). The base station will then send the uplink slot terminal assignment to the mobile terminal and will eventually receive the packet from the mobile terminal (see col. 8, lines 9-13).

The Examiner also admits that neither Larsson nor Beach show the step of transmitting a polling message along with uplink traffic; however, the Examiner relies on a table in Lu to reject the claimed subject matter (see page 3 of the Office Action of June 16, 2008). Table 1 of Lu shows Quality of Service (QoS) data frames that are proposed to enhance QoS in the 802.11e MAC standard (see paragraph 0040).

Applicants submit that one skilled in the art would not – and in fact, could not - implement the proposed data frames of Lu in Larsson. Admittedly, Larrson does show the process of sending a capacity request signal to a base station when a hibernating mobile terminal has a packet to send to the base station. The hibernating mobile terminal, however, cannot send a capacity request (i.e., polling message) along with uplink traffic to the base station – which is the claimed frame exchange – because the base station cannot receive or process the uplink traffic from the mobile terminal until the base station learns that the mobile terminal has changed its state. Larsson makes clear that a capacity request signal must be received before the base station can assign an uplink slot and send that assignment to the mobile terminal that wishes to transmit the packet of data. As such, it is physically impossible to initiate frame exchange at the mobile terminal by transmitting a polling message along with uplink traffic in the Larsson system.

Moreover, Applicants must stress that the QoS data frames described in Lu are used by a coordinator (149) of an access point (140) to grant contention-free transmission opportunities to wireless stations (see paragraph 0041 and FIG. 6). That is, these QoS data frames are sent when the access point initiates frame exchange, not so by the wireless stations. Thus, none of the cited references, individually or in combination, describe a process of initiating frame exchange at the communication device (not the access point) by transmitting a polling message along with uplink traffic to the access point.

Conclusion

In view of the above, Applicants contend that the claims are patentable over the cited prior art references. Reconsideration and withdrawal of the rejection of the claims is respectfully requested. Passing of this case is now believed to be in order, and a Notice of Allowance is earnestly solicited.

The Commissioner is hereby authorized to charge any necessary fee, or credit any overpayment, to Motorola, Inc. Deposit Account No. 50-2117.

Respectfully submitted,

Date: November 26, 2008

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